

§ 46.167

be vended in proper packages or directly from such packages.

(b) Tobacco products manufactured in the United States and labeled for exportation under chapter 52 of title 26, U.S.C. may not be sold or held for sale for domestic consumption in the United States unless such articles are removed from their export packaging and repackaged by the original manufacturer into new packaging that does not contain an export label. This applies to articles labeled for export even if the packaging or the appearance of such packaging to the consumer of such articles has been modified or altered by a person other than the original manufacturer so as to remove or conceal or attempt to remove or conceal (including by placement of a sticker over) the export label.

(c) For penalty and forfeiture provisions applicable to the selling, relanding or receipt of articles which have been labeled or shipped for exportation, see § 41.83 of this chapter.

[T.D. ATF-465, 66 FR 45618, Aug. 29, 2001, as amended by T.D. TTB-16, 69 FR 52423, Aug. 26, 2004]

§ 46.167 Liability to tax.

Any dealer who, with intent to defraud the United States, possesses tobacco products (a) upon which the tax has not been paid or determined in the manner and at the time prescribed in parts 40 and 41 of this chapter or (b) which, after removal without payment of tax pursuant to section 5704, I.R.C., and regulations issued thereunder, have been diverted from the applicable purpose or use specified in that section or (c) which are not put up in packages prescribed in parts 40 and 41 of this chapter or are put up in packages not bearing the marks and notices prescribed in such regulations shall be liable for a tax equal to the tax on such products.

(72 Stat. 1424; 26 U.S.C. 5751)

[T.D. 6871, 31 FR 60, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28092, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-460, 66 FR 390 93, July 27, 2001; T.D. TTB-16, 69 FR 52423, Aug. 26, 2004]

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§ 46.168 Liability to penalties and forfeitures.

Any dealer who fails to comply with the provisions of this subpart becomes liable to the civil and criminal penalties, and forfeitures, provided by law.

(72 Stat. 1425, 1426; 26 U.S.C. 5761, 5762, and 5763)

Subpart H [Reserved]

Subpart I—Floor Stocks Tax on Certain Tobacco Products, Cigarette Papers, and Cigarette Tubes Held for Sale on April 1, 2009

AUTHORITY: Section 701, Pub. L. 111-3, unless otherwise noted.

SOURCE: T.D. TTB-75, 74 FR 14486, Mar. 31, 2009, unless otherwise noted.

GENERAL

§ 46.191 Purpose of this subpart.

The regulations in this subpart implement the floor stocks tax on certain tobacco products, cigarette papers, and cigarette tubes held for sale on April 1, 2009.

§ 46.192 Definitions used in this subpart.

As used in this subpart, the following terms have the meanings indicated unless the context in which they are used requires a different meaning or a different definition is prescribed for a particular section or portion of this subpart.

(a) *Appropriate TTB officer.* An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.46, Delegation of the Administrator's Authorities in 27 CFR 46, Miscellaneous Regulations Relating to Tobacco Products and Cigarette Papers and Tubes.

(b) *Articles subject to floor stocks tax.* All Federally taxpaid or tax determined tobacco products (other than large cigars described in 26 U.S.C.

5701(a)(2)), cigarette papers, and cigarette tubes that are held for sale on April 1, 2009.

(c) *Cigarette paper*. Paper, or any other material except tobacco, prepared for use as a cigarette wrapper.

(d) *Cigarette tube*. Cigarette paper made into a hollow cylinder for use in making cigarettes.

(e) *Controlled group*. A related group of dealers under common control. Controlled groups include:

(1) *Controlled group of corporations*. The term “controlled group of corporations” has the meaning given to that term by 26 U.S.C. 1563(a) and the implementing regulations in 26 CFR 1.1563-1 through 1.1563-4, except that the phrase “more than 50 percent” shall be substituted for the phrase “at least 80 percent” each time it appears. Controlled groups of corporations include, but are not limited to:

(i) Parent-subsidiary controlled groups as defined in 26 CFR 1.1563-1T(a)(2).

(ii) Brother-sister controlled groups as defined in 26 CFR 1.1563-1T(a)(3).

(iii) Combined groups as defined in 26 CFR 1.1563-1T(a)(4).

(2) *Nonincorporated dealers under common control*. A group of dealers is considered to be a controlled group when the group would qualify as a controlled group of corporations, except for the fact that one or more of the dealers is not incorporated.

(f) *Dealer*. A person or other entity holding articles subject to floor stocks tax for sale on April 1, 2009, including manufacturers, importers, wholesalers, and retailers.

(g) *Floor stocks tax*. A tax imposed on all Federally taxpaid or tax determined tobacco products (other than large cigars described in 26 U.S.C. 5701(a)(2)), cigarette papers, and cigarette tubes held for sale on April 1, 2009. The floor stocks tax is the difference between the previous excise tax rate and the new excise tax rate.

(h) *Foreign trade zone*. A foreign trade zone established and operated pursuant to the Act of June 18, 1934, as amended, 19 U.S.C. 81a.

(i) *Person*. An individual, trust, estate, partnership, association, company, or corporation, any State, including the District of Columbia, or po-

litical subdivision thereof, or any agency or instrumentality of a State or political subdivision thereof.

(j) *Tobacco products*. Cigars, cigarettes, snuff, chewing tobacco, pipe tobacco, and roll-your-own tobacco as described in 26 U.S.C. 5702(a), (b), (m)(2), (m)(3), (n) and (o), respectively.

§ 46.193 Persons liable for floor stocks tax.

A dealer who holds for sale any articles subject to floor stocks tax on April 1, 2009, is liable for floor stocks tax. See §§ 46.204 and 46.205 regarding articles subject to floor stocks tax that are in transit on April 1, 2009 and § 46.206 regarding articles subject to floor stocks tax that are held in a foreign trade zone on April 1, 2009.

§ 46.194 Persons not liable for floor stocks tax.

A person who does not meet the definition of a dealer is not liable for the floor stocks tax under this subpart.

§ 46.195 Floor stocks requirements.

(a) *Take inventory*. The dealer must establish the quantity of articles subject to the floor stocks tax held for sale on April 1, 2009. The dealer may take a physical inventory or may use a record (book) inventory, as specified in § 46.202 or § 46.203.

(b) *Compute tax*. The dealer must compute the amount of tax for the articles held for sale on April 1, 2009. Refer to the table in § 46.222. The dealer may apply the tax credit as provided in § 46.223.

(c) *File tax return and pay tax*. After computing the floor stocks tax, the dealer must file a return even if no tax is due. See § 46.233 for payment methods if tax is due.

(d) *Maintain records*. The dealer must maintain all records used to determine the quantity of articles subject to floor stocks tax and the quantity of articles held for sale on April 1, 2009 that are not subject to floor stocks tax. The dealer must also maintain records of all computations used to determine the amount of tax owed. Refer to § 46.241.

(Approved by the Office of Management and Budget under control number 1513-0129)